

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PHILLIP PLATA,

Petitioner,

Civil No. 07-194-HA

v.

ORDER

J.E. THOMAS, Warden,
Federal Correctional Institution,
Sheridan, Oregon,

Respondent.

HAGGERTY, District Judge:

Petitioner brought a petition for a writ of habeas corpus [2] pursuant to 28 U.S.C. § 2241. He invokes this court's jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(4). Petitioner is a federal prisoner who was housed by the Bureau of Prisons (BOP) at the Federal Correctional

Institution in Sheridan, Oregon, until his transfer to Federal Prison Camp (FPC) in Lompoc, California on May 8, 2008. Petitioner was released from federal custody on April 6, 2009.

Petitioner asserted initially that the BOP erred in ranking him on a RDAP wait-list without regard to his possible eligibility for the possible, discretionary one-year sentence reduction available under 18 U.S.C. § 3621(e)(2)(B). Counsel for petitioner subsequently included this action in a Motion to Consolidate with lead case *Thurman v. Thomas*, Civil No. 06-1400-HA (*Thurman*). See Motion to Consolidate, Ex. A, filed in *Thurman*. The action was consolidated without objection under *Thurman*, and was stayed pursuant to the prosecution of that action.

For the reasons provided in the March 30, 2009, Order filed in *Thurman*, the stay imposed in this and the other consolidated actions is no longer necessary or proper and is vacated. Respondent has moved to dismiss the petition [59]. Counsel agreed that any objections by respondent would be filed by June 18, 2009. No objections have been advanced. For the following reasons, the petition is denied, and the Motion to Dismiss is granted.

ANALYSIS

Respondent alleges without objection from petitioner that the BOP found petitioner eligible for participation in RDAP and for possible early release benefits authorized by § 3621(e), on April 18, 2006. Declaration of Theresa T. Talplacido, ¶ 4, Att. 2. Petitioner began participating in the residential treatment portion of RDAP on August 27, 2007. *Id.* On May 14, 2008, he failed out of the RDAP program. *Id.*

Because petitioner failed out of the RDAP program, he is ineligible to receive the relief he sought in his Petition for Writ of Habeas Corpus. Accordingly, his petition must be dismissed as moot.

The statute at issue directs the BOP to provide substance abuse treatment to "eligible" prisoners who have a "treatable condition of substance addiction or abuse." 18 U.S.C. § 3621(b). As an incentive for prisoners to seek treatment, Congress made one-year sentence reductions available to some prisoners who complete the substance abuse treatment programs. 18 U.S.C. § 3621(e)(2)(B). Petitioner failed to successfully complete RDAP and is not entitled to the relief for which he has petitioned.

CONCLUSION

For the foregoing reasons, Phillip Plata's petition [2] is DENIED, and Respondent's Motion to Dismiss [59] is GRANTED.

IT IS SO ORDERED.

DATED this 28 day of July, 2009.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge